discretion to decree specific performance against an unwilling purchaser. See *Empire Realty Corp. v. Sayre* (1905) 107 App. Div. 415, 95 N. Y. Supp. 371; *Zelman v. Kaufherr* (1909) 76 N. J. Eq. 52, 73 Atl. 1048; *Goldstein v. Rosenberg* (1920) 191 App. Div. 492, 181 N. Y. Supp. 559. The minority view, that such an exercise of discretion by the trial court was justifiable and ought not to have been disturbed, seems sound.

TRUSTS—RESULTING TRUSTS—CONVEYANCE TO PARTNER—PART PAYMENT OF CONSIDERATION BY FIRM.—The plaintiff's intestate was engaged in a business partnership with his brother. The latter bought a farm, paying part of the consideration with his own money and the balance with funds derived from the partnership. The plaintiff sought to establish a resulting trust in a half-interest of the farm. *Held,* that in the absence of evidence as to the actual amount contributed, such contribution of partnership funds was insufficient to establish a resulting trust. *Herren v. Herren* (1921, Wash.) 203 Pac. 34.

When the legal title is conveyed to one person and the consideration is paid by another, the latter is presumed to have acted for his own benefit, and in the absence of a statute a resulting trust is raised in his favor. *Howe v. Howe* (1908) 199 Mass. 598, 85 N. E. 945; *Fox v. Shanley* (1920) 94 Conn. 350, 109 Atl. 249; (1916) 2 VA. L. REG. (N. S.) 228; 1 Perry, *Trusts* (6th ed. 1911) sec. 126. This presumption is rebutted if the consideration was advanced as a loan. *Surye v. Lemberger* (1921, N. J. L.) 114 Atl. 454. And when a duty of support exists, as in the case of a husband, a gift is presumed, although there is no such presumption when a wife furnishes the purchase money. *Bailey v. Dobbins* (1903) 67 Neb. 548, 93 N. W. 687; *Crawford v. Hurst* (1921) 299 Ill. 503, 132 N. E. 521; (1918) 27 YALE LAW JOURNAL, 705. To raise a resulting trust in the whole property it is evident that the whole purchase money must have been furnished. *Winston v. Mitchell* (1889) 87 Ala. 395, 5 So. 741. A resulting trust must arise, if at all, at the time legal title is taken. *Beecher v. Wilson* (1888) 84 Va. 813, 6 S. E. 209. Hence it is essential that no uncertainty exist as to the proportion of the property to which the trust attaches. *O'Donnell v. White* (1894) 18 R. I. 659, 29 Atl. 769; *Harton v. Amason* (1916) 195 Ala. 594, 71 So. 180. It has therefore been held that a "general contribution" to the purchase price is not sufficient to create a resulting trust. *Furber v. Page* (1892) 143 Ill. 622, 32 N. E. 444. And according to the earlier cases no trust would result unless the payment had been for an "aliquot part" of the property, a particular fraction, as one-half or one-fourth. *McGowan v. McGowan* (1859, Mass.) 14 Gray, 119. But in the later cases the term "aliquot part," when used in this connection, has been defined as a definite measurable interest. *Hinshaw v. Russell* (1917) 280 Ill. 235, 117 N. E. 406; *Fox v. Shanley, supra; Neathery v. Neathery* (1913) 114 Va. 650, 77 S. E. 465. However, it is evident that to establish the existence of a resulting trust it must clearly appear that a definite amount has been contributed. Inasmuch as the plaintiff in the instant case failed to establish the amount of the contribution by the partnership and his interest therein the court was clearly correct in its decision.

WILLS—REVOCATION BY CANCELLATION.—The testator, intending to cancel his will, wrote across its face a signed statement containing these words: "This will is hereby revoked." A statute provided that "no will . . . . shall be revoked . . . . unless such will be burnt, torn, cancelled, obliterated, or destroyed, with the intent and for the purpose of revoking the same." N. Y. Cons. Laws, 1909, ch. 18, sec. 34. *Held,* that the will was not revoked. *Matter of Parsons* (1922, Surro.) 117 Misc. 753, 191 N. Y. Supp. 910.

An unattested statement is not sufficient to constitute a revocation "by later

will, codicil, or other writing," unless executed with the same formalities as a will. *Matter of Miller* (1906, Surro.) 50 Misc. 70, 100 N. Y. Supp. 344. The English Wills Act requires that revocation by act shall be by "burning, tearing, or otherwise destroying," and hence no cancellation or obliteration can operate as such unless it amounts to a destruction of some part of the will. (1837) 1 Vict. c. 26, sec. 20; *Cheese v. Lovejoy* (1876, C. A.) L. R. 2 Prob. Div. 251. Under the New York statute and those of other American jurisdictions based upon the English Statute of Frauds, no words need be actually effaced or destroyed. The physical act may be only slight, if accompanied by a sufficient intention to revoke. *Glass v. Scott* (1900) 14 Colo. App. 377, 60 Pac. 186; *In re Alger* (1902, Surro.) 38 Misc. 143, 77 N. Y. Supp. 166. It is essential, however, that some material portion of the will be cancelled. *Howard v. Hunter* (1902) 115 Ga. 357, 41 S. E. 638; *In re Shelton* (1906) 143 N. C. 218, 55 S. E. 705. Drawing lines through the testator's signature, therefore, is a sufficient physical cancellation, even though the words remain legible. *Woodfill v. Patton* (1881) 76 Ind. 575; *Glass v. Scott, supra.* But a writing upon the back or margin of a will has been held not to be a revocation within the contemplation of the statute, upon the theory that no material part of the will has been cancelled. *In re Ladd* (1884) 60 Wis. 187, 18 N. W. 734; *Dowling v. Gilliland* (1919) 286 Ill. 530, 122 N. E. 70; *contra, Warner v. Warner* (1864) 37 Vt. 356; see *Evan's Appeal* (1868) 58 Pa. 238. Courts have reached different results in the application of this rule varying with the facts of each case. *Oetjen v. Oetjen* (1902) 115 Ga. 1004, 42 S. E. 387; *Matter of Akers* (1902) 74 App. Div. 461, 77 N. Y. Supp. 643. When the words were written across the face of the will, however, as in the principal case, a contrary and more satisfactory result has been reached. *Noesen v. Erkenswick* (1921) 298 Ill. 231, 131 N. E. 622. The instant case seems to construe the statute too narrowly, since the only requirement is a clearly recorded indication by the testator of his intention to revoke, exercised on a *material* part of the will. The court appears to have disregarded a decision to the contrary on nearly identical facts in the Surrogate's Court of another county. *In re Barnes* (1912, Surro.) 76 Misc. 382, 136 N. Y. Supp. 940.